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The Honorable Judge Timothy W. Dore
Chapter 7
Hearing Date: July 20, 2018
Hearing Time: 9:30 AM
Hearing Location: 700 Stewart St., Rm. 8106
Seattle, WA 98101
Response Date: July 13, 2018

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**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

13 In re:
14 JASON WESLEY DAVIS,
15 Debtor.

16 Case No.: 15-16254-TWD
17 CHAPTER 7
18 NOTICE OF MOTION AND
19 HEARING, MOTION TO DISMISS
20 CHAPTER 7 CASE FOR
21 UNREASONABLE DELAY TO
22 ADMINISTER THE ESTATE,
23 DEBTOR'S DECLARATION

24
NOTICE OF MOTION

25 PLEASE TAKE NOTICE Debtor Jason Wesley Davis' Motion to Dismiss his Chapter 7 case
26 for Unreasonable Delay to Administer the Estate **IS SET FOR HEARING** as follows:

27 JUDGE: Timothy W. Dore
28 PLACE: United States Courthouse
29 Courtroom 8106
30 700 Stewart St.
31 Seattle, WA 98101

32 DATE: July 20, 2018

33 TIME: 9:30 AM

34 IF YOU OPPOSE the Motion, you must file your written response with the court clerk,
35 serve two copies on the Judge's chambers and deliver copies to the undersigned attorney for the

36 NOTICE OF MOTION AND HEARING, MOTION
37 TO DISMISS CHAPTER 7 CASE FOR UNREASONABLE
38 DELAY TO ADMINISTER THE ESTATE

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1 debtor and the U.S. Trustee, NOT LATER THAN the RESPONSE DATE, which is **July 13,**
2 **2018.** If you file a response you are also required to appear at the hearing.

3 IF NO RESPONSE IS TIMELY FILED AND SERVED, the Court may, in its
4 discretion, GRANT THE MOTION PRIOR TO THE HEARING, WITHOUT FURTHER
5 NOTICE, and strike the hearing.

6 **MOTION TO DISMISS**

7 COMES NOW the Debtor, by and through his attorney of record, Dallas W. Jolley, Jr., on
8 the Dismiss his Chapter 7 case for Unreasonable Delay to Administer and for other reasons. This
9 motion is supported by the Declaration of Debtor, and the following:

10 1. On October 22, 2015, Debtor filed an individual Chapter 11 bankruptcy with the
11 purpose to prevent a foreclosure of his home, give him time to modify his mortgage, and work
12 out the payment of his other debts. Debtor works for a small money management firm, and his
13 income, though expected to increase, suffered from widely varying income ranging from \$7,922
14 to a high of \$21,969 with an average net income of \$13,195 between November 2015 to March
15 2016. His lack of income and failure to prepare and file his past-due income tax returns, file a
16 disclosure statement and plan, and pay quarterly fees to the US Trustee, resulted in his case
17 being converted to Chapter 7. The problem is that at the time he filed his Chapter 11, he owed
18 more on his and his wife's home than what it was worth. Traditionally, the economy of the
19 United States has bounced back after a recession in 6 months, but from 2008 to 2016, the
20 economy languished with little to no growth. As such, Debtor was working hard to just make
21 ends meet.

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1 2. 245 days after the filing of the case, the case was converted to Chapter 7. Since
2 the Debtor had no equity in his home or other assets, embarking on a liquidation was a fruitless
3 effort, but was one the United States Trustee seemed to think was a worthy alternative to
4 dismissal. Again, the problem was that there were no assets with non-exempt equity to
5 liquidate. Debtor informed the Trustee at the Chapter 7 meeting of creditors that he was
6 working on the modification of his mortgage. The Trustee apparently looked at the Debtor's
7 residence and did not see much of an opportunity to squeeze any money out of it. It is now 736
8 days since the case was converted to Chapter 7, and in January of this year, the Debtor finally
9 obtained a modification of his mortgage and without the ability to negotiate with creditors being
10 in bankruptcy, the Debtor cannot deal with the IRS or even his automobile lenders. The Debtor
11 may now have some equity in his home over two years after his case was converted to Chapter
12 7, and now the Trustee is acting like he is considering selling the home as he is asking to have
13 his real estate agent look at the home. He has also hired an attorney, Michael Klein, to
14 represent him in moving forward with selling the home and to investigate whether there are any
15 undisclosed assets.

16 3. Debtor does not believe it was the intent of Congress to allow a Chapter 7 trustee
17 to hold open a case for over two years just waiting for a home to gain some value that had no
18 equity when the case was filed. Essentially, the Chapter 7 Trustee has held the Debtor hostage
19 in bankruptcy, preventing the Debtor from moving forward with his financial life.

20 4. Normally, the U.S. Trustee or the Court moves to dismiss a case because of
21 various actions or inactions of the Debtor. Not filing schedules, not appearing at the meeting of
22 creditors, or doing other things that would cause an unreasonable delay for the Trustee to carry

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1 out his purposes. One could hardly argue that this Debtor has prevented the Chapter 7 Trustee
2 from doing his job. Now that the Trustee is having his real estate broker again look at the
3 property at this late date would make any debtor in this Debtor's position nervous about having
4 his house sold just when he has convinced his mortgage company that he is worthy of a loan
5 modification. Debtor and his wife and children want to continue to reside in their home.

6 5. Normally, the facts going into a case regarding equity at the time of filing is the
7 point the Court looks to see whether there is a justification for a liquidation of the home. For
8 the Trustee to move to sell the Debtor's family home at this late date ignores the equities of
9 bankruptcy. One should not get a head start because of a bankruptcy, but for a Trustee to wait it
10 out for a recession to get behind the country so that when the Debtor finally is seeing his
11 financial life turn around, the hibernating Trustee sweeps in and takes the post-petition equity
12 gained for a case that was a no-asset case at filing and later at conversion that has been held
13 open artificially simply because the Trustee anticipated a turn-around in the housing market.

14 6. "Can the Debtor obtain a fresh start outside a bankruptcy?" is a question some
15 courts have asked. Debtor's debt consists of student loans he must pay, and car loans on cars
16 that have depreciated just like all vehicles do, and estimate tax debt. The Debtor does have
17 some federal income tax debt, but there apparently are no federal tax liens. The Debtor believes
18 that when he has the opportunity to work with the IRS, then the tax debt estimated by the IRS
19 during the Chapter 11 will be greatly reduced; being in Chapter 7 does not allow the IRS to
20 work with the Debtor for an offer in compromise or any other negotiated settlement.

21 7. "Can the Debtor pay his creditors outside of bankruptcy?" is another question to
22 be asked at this time. Because of a previous discharge, the bankruptcy will not help the Debtor

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1 get out of debt. So can he pay his creditors outside of bankruptcy? The home mortgage is now
2 modified, so that is not a problem for the Debtor. The Debtor will have to work with the IRS
3 about the Debt he and his wife owes to them, but in Chapter 7, that provides him no relief and
4 money for the IRS. Debtor would be better able to settled with all of his creditors outside of
5 Chapter 7 and do so at a reduced amount because if he sold his own house, he could avoid the
6 Chapter 7 Trustee's multi-layered commission for selling the home, leaving less for everyone.
7 Debtor also has had increasing income, which would help him pay on his debts, which are
8 primarily income tax and student loans.

9 8. “Does dismissing the Debtor’s case prejudice creditors?” While the Trustee may
10 be able to sell the Debtor’s home and gain some funds to pay creditors, doing so would only
11 happen because the Trustee artificially held the case open in disregard to the fact that no equity
12 was present at the time the case became a Chapter 7. During June 2016, when the case was
13 converted to Chapter 7, the home’s fair market value was under \$1.2 million, with a county
14 appraised value of \$1,018,000.00 for tax year 2016. For tax year 2018, the county appraises the
15 home at \$1,187,000.00. The mortgage modification lists the loan balance at \$1,314,104.15.
16 The Debtor and his wife signed the loan modification on January 9, 2017, but it took the
17 mortgage company until January 25, 2018 to sign the document. The Debtor worked long and
18 hard to qualify for the loan modification.

19 9. Was the Debtor attempting to abuse the bankruptcy process when he filed his
20 case, or acted in bad faith? He had filed bankruptcies in the past. But we have lived in a time
21 over the past few years that saw no positive growth, which has made it quite difficult for a
22 person to reorganize. People who have had good businesses and steady commissions for years

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1 have seen no growth or negative growth. This Debtor, a money manager, has had a tough time
2 because people had moved into cash positions for fear of loss, greatly reducing money under
3 management.

4 10. As the Debtor had received a discharge in a past bankruptcy, he will get no relief
5 from this bankruptcy and this will also be true for his car loans, his student loans, his mortgage
6 and his IRS debt will continue once his case is closed. The sale of his family home may pay
7 some of his debts, but is that equitable for the Debtor? The delay of the closing of the case by
8 the Trustee just to see whether the Debtor's home would appreciate is inequitable. A report of
9 no distribution should be issued when there are no assets presently available to be liquidated
10 unless a personal injury or other such asset needs to be settled, not just waiting it out to see if
11 assets appreciate.

WHEREFORE, Debtor requests the Court to enter an order dismissing his Chapter 7 case.
Respectfully Submitted this June 29, 2018.

/s/ Dallas W. Jolley, Jr.
Dallas W. Jolley, Jr., WSBA No. 22957
Attorney for Debtor

DECLARATION OF DEBTOR

I, Jason Wesley Davis, have requested that my attorney prepare the above motion to
17 dismiss my Chapter 7 case. I have languished here in this Chapter 7 case for over two years, and I
18 had the good fortune to modify the mortgage to our home in January of this year. It took the
19 mortgage company over a year to just sign their proposed modification agreement. The Trustee
20 suggested that if I modified the mortgage of my home, then he would not pursue selling it. I have
21 finally modified the loan, but now the Trustee is gearing up to sell our family home. This, to me, is
22 unfair, because having been held in an open Chapter 7 for over two years has prevented me from

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1 working with my creditors--car lenders, the IRS, and my other creditors. I have been in financial
2 limbo during these two years.

3 As a money manager, I can't hold on to an investor's money if I am not bringing a good
4 return on their investment and have they requested their investment shares be liquidated and the
5 proceeds turned over to them; I can't hold their invested capital hostage just because I hope for an
6 uptick to the markets. At the time the Trustee interviewed me at the meeting of creditors, I had no
7 equity in any of my assets. My case was a no-asset case, using bankruptcy terminology.

8 I therefore, respectfully request that my case be dismissed so I can keep my house for my
9 wife and kids, and I will deal with my creditors because there will be no stay to prevent me from
10 doing so.

11 I declare under penalty of perjury that the foregoing is true and correct to the best of my
12 knowledge, information and belief.

13 Dated this 29th day of June, 2018.

14 _____
15 /s/Jason Wesley Davis
Jason Wesley Davis, Debtor

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